REMARKS/ARGUMENTS

The Examiner has raised written description and enablement concerns in the RCE filed that never developed during the prosecution of the original application. To better understand these concerns, the Applicant's representative conducted a personal interview with the Examiner on January 6, 2006, to discuss these matters, as well as the prior art rejections. Although the Applicant wholeheartedly disagrees with the newly raised formal matters, it was agreed that the prior claims would be canceled and new claim sets that have clear support in the application as filed would be added. To this end, new claims 128-143 have been introduced by this amendment/response. These new claims are considered to set forth, in a simplified manner, the essence of the previously claimed subject matter. More specifically, independent claim 128 is generally directed to a customized food product comprising a package containing a consumer selected food ingredient and a consumer selected additive. Dependent claims 129-134 provide specification supported specifics in detailing a particular food ingredient and additive, as well as claiming the addition of acesulfame K. Claims 135-137 represent subcombination claims directed to a popcorn snack, which is one of the many available customizable food products in accordance with the invention. Finally, claims 138-143 present method claims for preparing the popcorn snack of claims 135-137.

As stated above, all of the limitations are expressly set forth in the specification. Given the formal objections and rejections presented by the Examiner in the last Office Action, it is considered appropriate to reference to the Examiner at least one specification statement that provides support for the claimed subject matter. To this end, for claim 128, it is submitted that the specification is replete with reference to a "customized food product" which includes an ingredient (see paragraph 0060 or 0123 of the published application), an additive (see, for example, paragraph 0059), and a package (see paragraph 0194), each of which can be selected by a consumer. The food product can include popcorn snacks (see paragraph 0068) for claim 129. The additive can be a

sweetener (see paragraphs 0059 and 0073) which, in turn, can be constituted by sugar substitutes (paragraphs 0071 and 0072) including sucralose (0095), as now covered by claims 130 and 131. (Note that paragraph 0130 explicitly discusses the sweetening of the mentioned snack products). The customized food product may require further finishing by the consumer (see paragraph 0276). Particularly, the specification states that a "consumer can further 'finish' a customized food product in any manner, such as by cooking, baking, grilling, heating, puffing, popping, etc." which supports the subject matter of claims 133 and 134.

As indicated above, claims 135-137 represent subcombination claims to the combination certain ones of claims 128-134. More specifically, claim 135 is a subcombination of claim 131. Claim 136 is a subcombination of claim 133. Finally, claim 137 is a subcombination of claim 134. It is submitted that these subcombination limitations find clear support in the specification for at least the same reasons discussed above. The same is true with respect to method claims 138-141. As for the subject matter of claim 142 and the use of microwave energy in connection with cooking, again note paragraph 0276.

As previously indicated to the Examiner during the personal interview, it is not reasonable to expect the Applicant to provide a detailed description of every possible permutation or combination of ingredients, additives, etc. that can be made in accordance with the invention. Clearly the specification contains, verbatim, each and every word recited in the claims. As the invention allows the consumer to choose from an abundance of cereal and snack products, specifically mentions popcorn snacks, explicitly states that the snacks can be sweetened, clearly outlines a host of useable sweeteners and separately identifies sucralose and talks about finishing a packaged food product through a popping operation, it should be perfectly clear that the claimed invention is fully supported in the original disclosure and one of ordinary skill in the art, after reading and understanding the specification, could easily make the claimed invention without undue experimentation.

To this end, it is not seen appropriate to attempt to overly limit the invention in the manner suggested by the Examiner.

With respect to the application of prior art, the Examiner basically holds that it would have been obvious to one of ordinary skill in the art, at the time of the present invention, to combine commercially available microwave popcorn with sucralose in light of the teachings of Ezzat (GB 2250266) and Google Groups (12/9/1999). Ezzat discloses a popcorn product comprising butter, sugar, and unpopped kernels in a microwave package but is silent in teaching sucralose as a sweetener. Google Groups (12/9/1999) teaches the addition of sucralose to popcorn **only** after popping. The Applicant respectfully submits that the prior art does not render obvious even the broadest claimed subject matter for at least the reasons set forth below.

Initially, it should be readily apparent that neither applied reference has anything to do with customizing food products, particularly customizing food products wherein a consumer can select an ingredient, an additive and a packaging as currently claimed in claims 128-134.

As for the remaining claimed subject matter directed to the popcorn with sucralose, the Applicant questions the effective prior art of the Google reference. The Applicant submits that sucralose was not approved for sale or made available to the public until approximately eight months after the filing date of the present application. That is, according to the United States Food & Drug Administration (FDA), Splenda (i.e. sucralose) was not available to the public in an independent form until October 2000. Although Splenda was publicly available as a sweetener in certain products, such as beverages, it was not available alone in a usable sweetener form. To this end, the Examiner is invited to review www.allbusiness.com/periodicals/article/651879-1.html by Food & Drink Weekly which supports the Applicant's contention that sucralose was not available for the first time to consumers until October 2000. Based on this knowledge,

the Applicant would question the date of the Google reference. Even if the date could be verified, since the product was not available to a consumer who would represent the "one of ordinary skill" under consideration, the statements in the Google reference would not enable one of ordinary skill in the art to make a popcorn package with popcorn and sucralose, particularly as the sucralose was simply not be available at the time. That is, the teaching of Google Groups (12/9/1999), namely to add Splenda to popped popcorn, would have been impossible in 1999. Thus, Google Groups (12/9/1999) is not viable prior art. Without the Google Groups (12/9/1999) reference, there is no teaching of using sucralose with popcorn.

In the Office Action, the Examiner, without citing prior art patents to this effect, stated that "[i]t is well known in the art that sucralose has been marketed as a sugar substitute suitable for heating and cooking operations." First, well known to who? The average consumer? There is no reference or other teaching of record to pop the combination of popcorn with sucralose, let alone pop popcorn and sucralose utilizing microwaves.

Finally, even if available as prior art and combined, the combination of Ezzat and Google does not suggest the claimed invention since the Google disclosure only teaches to add sucralose after the package is opened. As now worded, the sucralose would have to be added prior to packaging and, at least for some claims, prior to cooking or popping. Simply stated, no prior art to date has been presented which teaches to add sucralose to popcorn prior to packaging and even furthermore prior to cooking the popcorn. Unlike conventional cooking utilizing radiation heating principles, microwave heating involves the application of wavelengths to excite molecular, namely water, bonds in food. As a result, microwave heating physically affects food differently than conventional heating.

In view of the amendments to the claims and the above remarks, the Applicant respectfully requests the allowance of the new claims and passage of the application to issue. If the Examiner should have any additional concerns regarding the allowance of the application, he is cordially invited to contact the undersigned at the number provided below.

Respectfully submitted,

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